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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

August 1, 1994

Mr. William A. Caton
Acting Secretary
Federal Communications Commission
Washington, DC 20554

Re: CC Docket No. 92-77 Billed Party Preference for 0+ InterLATA Calls

Dear Mr. Caton:

Transmitted herewith for filing on behalf of Oncor Communications, Inc. are an original and four copies of its comments in response to the Further Notice of Proposed Rulemaking issued by the Commission in the above-captioned matter. If there are any questions regarding this filing, please communicate directly with the undersigned.

Sincerely,



Mitchell F. Brecher

enclosures

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Before the
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Washington, DC 20554

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In the Matter of

Billed Party Preference
for 0+ InterLATA Calls

CC Docket No. 92-77

COMMENTS ON FURTHER NOTICE OF PROPOSED RULEMAKING

ONCOR COMMUNICATIONS, INC.

Mitchell F. Brecher
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August 1, 1994

SUMMARY

Oncor Communications, Inc. opposes the Commission's proposal to require the implementation of a system of billed party preference (BPP) and believes that BPP would not serve the public interest. The Commission's asserted primary benefit of BPP -- ensuring the ability of all users of operator-assisted services to reach their preferred carrier from any telephone -- already has been achieved by enactment of the Telephone Operator Consumer Services Improvement Act and promulgation of the Commission's operator service rules, including the posting and branding requirements, the right to rate information, and, most importantly, the requirement that all aggregator telephones allow access to customers' preferred carriers through use of access codes.

The Commission's tentative conclusion that the benefits of BPP would outweigh its costs is unsupported by the record. First, the Commission's \$1.1 billion BPP implementation estimate is based on stale data and is significantly understated and incomplete. It does not include a realistic estimate for necessary software costs; it contains no allocation for overhead; it includes no costs for 14 digit screening, despite the fact that 14 digit screening is necessary to allow more than one carrier to issue line number-based calling cards; it underestimates the costs of full customer notification and proper balloting procedures; it excludes the additional costs which would have to be incurred in order for BPP to accommodate commercial credit cards; it significantly underestimates the costs to be borne by IXCs; and it totally ignores the costs of millions of dollars of stranded investment which would be borne by telephone aggregators, including many public and eleemosynary institutions.

The Commission's perceived benefits are exaggerated and misstated. There is no basis for the Commission's conclusion that access code dialing impedes access to networks. Indeed, consumers have enthusiastically embraced access code dialing, in part, as a result of aggressive

marketing by major IXC's of access code-based services (e.g. 1-800-COLLECT, 1-800-CALLATT). Oncor and other OSPs have experienced significant reductions in traffic as a result of access code services. Oncor has seen dial around calling increase by fifteen to twenty-five percent per year since the telephone equipment unblocking rules went into effect. Moreover, the Commission's premise that BPP would eliminate aggregator commissions which cause high rates is incorrect. The vast majority of commissions are paid to aggregators -- not by so-called "third tier OSPs," but by the "Big 3" carriers (AT&T, MCI, and Sprint). Unless the Commission is prepared to direct those carriers to reduce their rates following BPP implementation, it is unlikely that BPP will have any impact on most operator service rates.

Neither is BPP an appropriate means for eliminating AT&T's retained advantages in the operator service market. Much of AT&T's advantage in that market is derived from its introduction of calling cards issued in the Card Issuer Identifier (CIID) format and its insistence that those cards be accorded proprietary status by the Commission despite the fact that there is nothing proprietary about them. If the Commission is, as stated in its Further Notice, truly concerned about reducing those advantages, it can do so simply by mandating that those CIID cards be made available for validation by all carriers on a nondiscriminatory basis or that their use be limited to access code dialing. Those solutions will prevent AT&T from exploiting its advantages in the 0+ market far more equitably and efficiently than would forced implementation of a multi-billion dollar system of BPP.

The Commission's suggestion that BPP would provide incentives to OSPs to focus their efforts on end users is unsupported and illogical. With access code unblocking available everywhere and dial around calling increasing at a rapid rate, those OSPs who market their services to aggregators now have enormous incentives to provide service quality and prices that consumers want. If they fail to do so, the volume of traffic carried by them will continue to be reduced.

A critical basis for the Commission's tentative conclusion in favor of BPP is that it would enable callers "always" to reach their preferred carrier. However, there are no fewer than ten categories of calls which may not and, in some cases, cannot, be subject to BPP. (These ten categories are listed and described at pp. 24-31 of these comments). Thus, BPP is, at most, an incomplete solution to whatever perceived problems it is intended to solve, and, in the words of the Commission, it would "increase rather than decrease confusion about operator service dialing rates."

Although the full costs of BPP are not yet known, there is no question that it would be a very expensive undertaking. Yet, there appear to be significant problems in determining how those billions of dollars should be recovered. BPP costs, like all costs of regulated communications services, should be recovered from the cost causers. Yet, the Commission candidly recognizes that IXC/OSPs would seek to avoid those costs by having their customers access their services via access codes rather than on a 0+ basis. If carriers and their customers would, as expected by the Commission, choose to use access codes rather than be saddled with BPP costs, that demonstrates that the Commission's perceived benefit in callers' being able always to reach their preferred carrier without use of access codes would be largely illusory.

In addition to being a concept whose purported benefits and costs are unsupported by the record, BPP may also be unlawful. If the FCC requires its implementation, the Bell Operating Companies and the GTE Operating Companies would have to choose between complying with the FCC's BPP requirements or complying with the premises owner presubscription obligations imposed on them by the court with jurisdiction over their respective antitrust consent decrees. They could not comply with both, and they would have to obtain decree relief from the court in order to implement BPP.

The initial regulatory flexibility analysis set forth in the notice of proposed rulemaking does not meet the requirements for such initial analyses required of the Commission and other governmental agencies in the Regulatory Flexibility Act in several significant respects.

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SUMMARY

Oncor Communications, Inc. opposes the Commission's proposal to require the implementation of a system of billed party preference (BPP) and believes that BPP would not serve the public interest. The Commission's asserted primary benefit of BPP -- ensuring the ability of all users of operator-assisted services to reach their preferred carrier from any telephone -- already has been achieved by enactment of the Telephone Operator Consumer Services Improvement Act and promulgation of the Commission's operator service rules, including the posting and branding requirements, the right to rate information, and, most importantly, the requirement that all aggregator telephones allow access to customers' preferred carriers through use of access codes.

The Commission's tentative conclusion that the benefits of BPP would outweigh its costs is unsupported by the record. First, the Commission's \$1.1 billion BPP implementation estimate is based on stale data and is significantly understated and incomplete. It does not include a realistic estimate for necessary software costs; it contains no allocation for overhead; it includes no costs for 14 digit screening, despite the fact that 14 digit screening is necessary to allow more than one carrier to issue line number-based calling cards; it underestimates the costs of full customer notification and proper balloting procedures; it excludes the additional costs which would have to be incurred in order for BPP to accommodate commercial credit cards; it significantly underestimates the costs to be borne by IXCs; and it totally ignores the costs of millions of dollars of stranded investment which would be borne by telephone aggregators, including many public and eleemosynary institutions.

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Neither is BPP an appropriate means for eliminating AT&T's retained advantages in the operator service market. Much of AT&T's advantage in that market is derived from its introduction of calling cards issued in the Card Issuer Identifier (CIID) format and its insistence that those cards be accorded proprietary status by the Commission despite the fact that there is nothing proprietary about them. If the Commission is, as stated in its Further Notice, truly concerned about reducing those advantages, it can do so simply by mandating that those CIID cards be made available for validation by all carriers on a nondiscriminatory basis or that their use be limited to access code dialing. Those solutions will prevent AT&T from exploiting its advantages in the 0+ market far more equitably and efficiently than would forced implementation of a multi-billion dollar system of BPP.

The Commission's suggestion that BPP would provide incentives to OSPs to focus their efforts on end users is unsupported and illogical. With access code unblocking available everywhere and dial around calling increasing at a rapid rate, those OSPs who market their services to aggregators now have enormous incentives to provide service quality and prices that consumers want. If they fail to do so, the volume of traffic carried by them will continue to be reduced.

A critical basis for the Commission's tentative conclusion in favor of BPP is that it would enable callers "always" to reach their preferred carrier. However, there are no fewer than ten categories of calls which may not and, in some cases, cannot, be subject to BPP. (These ten categories are listed and described at pp. 24-31 of these comments). Thus, BPP is, at most, an incomplete solution to whatever perceived problems it is intended to solve, and, in the words of the Commission, it would "increase rather than decrease confusion about operator service dialing rates."

Although the full costs of BPP are not yet known, there is no question that it would be a very expensive undertaking. Yet, there appear to be significant problems in determining how those billions of dollars should be recovered. BPP costs, like all costs of regulated communications services, should be recovered from the cost causers. Yet, the Commission candidly recognizes that IXC/OSPs would seek to avoid those costs by having their customers access their services via access codes rather than on a 0+ basis. If carriers and their customers would, as expected by the Commission, choose to use access codes rather than be saddled with BPP costs, that demonstrates that the Commission's perceived benefit in callers' being able always to reach their preferred carrier without use of access codes would be largely illusory.

In addition to being a concept whose purported benefits and costs are unsupported by the record, BPP may also be unlawful. If the FCC requires its implementation, the Bell Operating Companies and the GTE Operating Companies would have to choose between complying with the FCC's BPP requirements or complying with the premises owner presubscription obligations imposed on them by the court with jurisdiction over their respective antitrust consent decrees. They could not comply with both, and they would have to obtain decree relief from the court in order to implement BPP.

The initial regulatory flexibility analysis set forth in the notice of proposed rulemaking does not meet the requirements for such initial analyses required of the Commission and other governmental agencies in the Regulatory Flexibility Act in several significant respects.

INTRODUCTION

Consumer Services Improvement Act of 1990 ("TOCSIA")³ and with the Commission's rules and regulations governing provision of operator services.⁴

The issue of billed party preference ("BPP") has been before the Commission since April 1989 when Bell Atlantic filed with the Commission a petition for rulemaking asking the Commission to establish a uniform dialing plan from pay telephones.⁵ The "uniform dialing plan" proposed by Bell Atlantic in that petition was a system of billed party preference. Under billed party preference, 0+ calls would be routed automatically to the interexchange carrier ("IXC") or operator service provider ("OSP") selected by the party being billed for the call, rather than to the IXC/OSP to which the originating telephone is presubscribed.⁶

In May 1992, the Commission commenced this proceeding with issuance of a notice of proposed rulemaking.⁷ In the NPRM, the Commission "tentatively concluded" that "in concept, a nationwide system of billed party preference for all 0+ interLATA calls is in the public interest."⁸ Notwithstanding that "tentative conclusion" about billed party preference as a concept, the record compiled in this proceeding raises numerous concerns about the wisdom of billed party preference as a service to be implemented and

³ TOCSIA is codified at Section 226 of the Communications Act, 47 U.S.C. § 226 (1992).

⁴ Sections 64.704 - 64.708 of the Commission's rules, 47 C.F.R. §§ 64.704 - 64.708.

⁵ See Bell Atlantic Petition for Rulemaking to Establish Uniform Dialing Plan from Pay Telephones, RM-6723, filed April 13, 1989.

⁶ Bell Operating Company ("BOC") and GTE Telephone Operating Company ("GTE") public telephones are subject to a system of premises owner presubscription mandated by the federal court with jurisdictional authority over the consent decrees which govern those companies' obligations to provide equal access. See United States v. Western Electric Co., Inc. et al., 698 F. Supp. 348 (D.D.C. 1988). Under that system, the owner of the premises upon which a public telephone is located is entitled to select the IXC/OSP which provides long distance service from the phone on a presubscribed basis. Owners of other telephones, including privately-owned pay telephones, are entitled under those decrees to select the presubscribed carrier to serve their phones.

⁷ Billed Party Preference for 0+ InterLATA Calls (Notice of Proposed Rulemaking), 7 FCC Rcd. 3027 (1992) ("NPRM").

⁸ *Id.* at 3029.

foisted upon the telecommunications industry and the consuming public. Based upon that record, it is apparent and undisputed that billed party preference would be a very costly undertaking. The Commission estimates its implementation costs to be in excess of one billion dollars and those costs appear to be incomplete and significantly understated (see Section II of these comments, below). In addition, there are serious unanswered questions regarding whether billed party preference can -- irrespective of cost -- be implemented on a broad basis; when it can be implemented at all; how it would be introduced to the consuming public; as well as how -- and from whom -- the considerable costs of billed party preference should be recovered.

Indeed, some of the earliest proponents of billed party preference, including its original advocate before the Commission -- Bell Atlantic, now unqualifiedly oppose its implementation. Billed party preference is widely opposed by the interexchange carriers -- dominant⁹ and nondominant,¹⁰ by the pay telephone industry,¹¹ and by public¹² and nonpublic¹³ aggregators. Among the local exchange carriers ("LECs"), i.e., the entities which would have to implement billed party preference if ordered by the Commission, positions range from outright opposition to limited support contingent upon numerous and significant qualifications, limitations, and exceptions (e.g., 10 digit screening, non-applicability to intraLATA calling, and guarantees for cost recovery irrespective of usage of billed party preference). The only other supporters of the Commission's billed party preference proposal are a handful of state commissions, and two IXC's -- MCI and Sprint.

⁹ See comments of AT&T Communications.

¹⁰ See, e.g. comments of International Telecharge, Inc., the Competitive Telecommunications Association (CompTel), and LDDS.

¹¹ See, e.g., comments of American Public Communications Council, California Payphone Association, and Northwest Payphone Association.

¹² See, e.g., comments of Harvard University and Greater Orlando Airport Authority.

¹³ See, e.g. comments of American Hotel and Motel Association, National Association of Convenience Stores.

Issuance of the Further Notice reflects the Commission's recognition that the record established in response to the NPRM has become stale, and is simply inadequate to support an order requiring the telephone industry to spend well in excess of one billion dollars on a solution to a problem which largely has dissipated as a result of Congressional and regulatory initiatives, and as a result of changed consumer behavior in response to those initiatives.

Despite its own expressed doubts about that record, the Commission has indicated in the Further Notice its belief that billed party preference would, if implemented within certain specified parameters, serve the public interest, and that its benefits would outweigh its costs. Oncor disagrees with these tentative conclusions. As it will explain in these comments, billed party preference, irrespective of its facial appeal, would be a costly, cumbersome, incomplete, and possibly unlawful "solution" to problems which have largely been obviated by previous Commission actions, and by marketplace developments.

I. TOCSIA AND THE COMMISSION'S REGULATIONS IMPLEMENTING TOCSIA HAVE OBTIATED THE NEED FOR BPP

As will be explained in the following section, BPP would be an extremely costly undertaking. Moreover, even if its implementation is ordered by the Commission, BPP will not -- indeed cannot -- be implemented in a manner which guarantees that all -- or even most -- callers will reach their preferred carrier on a 0+ dialing basis. However, before addressing the costs and benefits of BPP or the feasibility of BPP -- irrespective of cost -- to provide a uniform and ubiquitous means for 0+ calling, Oncor respectfully asks the Commission to consider carefully the need for a BPP solution in light of legal/regulatory and industry developments which have occurred since the BPP concept was first proposed to the Commission in 1989 and since the Commission's 1992 NPRM in this proceeding.

When BPP was first proposed to the Commission in 1989, TOCSIA had not yet been enacted, and the Commission had not yet promulgated any rules to govern the conduct of IXC/OSPs or of aggregators. Many consumers at that time had their 0+ calls from aggregator locations completed by carriers they had never heard of, let alone had selected. They were charged rates well in excess of the rates charged by their carriers with whom they were familiar and often were charged rates based upon originating locations different from the real originating location of the call. Perhaps more importantly, they often were unable to access their preferred carriers because aggregators "blocked" access codes, thereby preventing callers from reaching their chosen carrier.

In response to these circumstances, Congress enacted TOCSIA and the Commission adopted rules governing operator services.¹⁴ As a result, all OSPs now must identify themselves clearly at the beginning of any 0+ call, the OSP's identity must be posted on or near the telephone, rate information must be provided upon request, calls may not be "splashed" to another originating location without the caller's informed consent, and, most importantly, aggregator telephones must allow access via access codes to the carrier of the calling party's choice, irrespective of cost to the aggregators, even in circumstances where those telephones must be modified or replaced.¹⁵

In short, complete and accurate consumer information and unrestricted access to callers' preferred carriers is the law of the land. Therefore, today no consumer is

¹⁴ Oncor's predecessor, International Telecharge, supported enactment of TOCSIA as a means to correct the abuses which had occurred in the operator services industry and to promote order and consumer responsiveness in that business.

¹⁵ Policies and Rules Concerning Operator Service Providers (Report and Order), 6 FCC Rcd. 2744 (1991), *recon den.* 7 FCC Rcd. 3882 (1992). See also 47 C.F.R. § 64.703 *et seq.*

precluded from reaching the carrier of its choice and from making an informed choice of carrier. Callers electing to use the services of a presubscribed OSP to complete 0+ calls do so only with full disclosure of the identity of that OSP, and with a federally-mandated entitlement to information concerning all rates which will be charged for those services.

Moreover, the dramatic growth in the frequency of access code-based "dial around" calling since enactment of TOCSIA and implementation of the Commission's rules prohibiting access code blocking indicates broad-based consumer acceptance of those access methods. Oncor knows firsthand that mandatory availability of access code dialing from all aggregator locations has enabled millions of callers to utilize the services of their selected carrier rather than the presubscribed OSP whenever that is the consumers' preference. Use of access code dialing (i.e., so-called "dial around" calling) has increased dramatically. During the period following implementation of the Commission's unblocking requirements in 1992, dial around calling has reduced Oncor's traffic from aggregator telephones presubscribed to it by up to fifty percent. Faced with traffic reductions of this magnitude, Oncor and other OSPs must choose between maintenance of higher rates and corresponding loss of business on the one hand, and reduction of rates in order to deter consumers from continuing to choose to utilize dial around access, on the other hand. That decision will be -- and should be -- dictated by the marketplace and by carriers' perceptions of the marketplace, rather than by the forced implementation of a billion dollar government-mandated system of BPP. Stated simply, whatever need might have existed for a system of billed party preference in 1989 has dissipated as a direct and proximate result of TOCSIA, actions by the Commission, and by marketplace responses thereto.

II. BPP WOULD BE A VERY EXPENSIVE UNDERTAKING

In the Further Notice, the Commission "estimates" that BPP would cost approximately \$1.1 billion to implement and would cost an additional \$60 million per year in recurring costs.¹⁶ These estimates are based upon cost estimates submitted more than two years ago by the Bell Operating Companies and other LECs in their initial comments on the NPRM, as supplemented -- and changed -- by some of the many post-comment *ex parte* submissions filed during the past several years. As the Commission itself recognized, the cost estimates submitted heretofore are stale and imprecise.¹⁷ As the Commission also noted, vendors have not even been able to provide cost estimates without a greater understanding of LEC requirements, and some of the software necessary to implement BPP has not yet been developed.¹⁸

Until the LECs provide the Commission with complete, current, and verifiable cost projections based on firm cost commitment information provided by their vendors, neither the parties to this proceeding, nor the Commission itself, are in a position to reach any conclusions about BPP implementation costs. Oncor awaits submission of such current, accurate and complete cost estimates, and will evaluate such estimates -- assuming that they can be provided by the LECs -- in its reply comments. However, even without such cost information, the Commission's projection that BPP would cost \$1.1 to implement appears to be incomplete and substantially understated.

That projection appears low for several reasons. For example, the Commission indicates that end office software costs would approximate \$480 million. In "support" of that industry-wide estimate, the Commission cites to software estimates of four Regional Bell Operating Companies (Southwestern Bell, US West, BellSouth, and NYNEX), plus

¹⁶ Further Notice, *supra*, at ¶ 20.

¹⁷ *Id.* at ¶ 2.

¹⁸ *Id.* at ¶ 20.

USTA.¹⁹ Since, as the Commission itself has recognized, the necessary software has not yet been invented, no one really knows what its costs will be. Moreover, this estimate appears to exclude the costs by three other RBOCs.²⁰

In addition, the Commission's cost estimates include no allocation of overhead costs to the LECs' BPP implementation costs, despite the fact that the Commission has recognized that LECs would seek to include overhead loading factors of as much as thirty percent to their costs.²¹

Another cost ignored by the Commission in its BPP cost analysis is the cost of implementation of BPP with fourteen digit screening rather than ten digit screening. Based upon information in the record, fourteen digit screening is essential in order for more than one carrier to be able to issue line number-based calling cards and have those cards used in a BPP environment. Without fourteen digit screening, only one carrier could provide a customer with a line number-based calling card, unless the other carriers were willing to perform their own billing and collection for line number-based card calls.²² Obviously, a condition under which the LECs -- and only the LECs -- can provide customers with line number-based calling cards which can be validated through

¹⁹ *Id.* at ¶ 21 n. 39.

²⁰ The combined estimated software costs of the four RBOCs cited by the Commission totals \$299.8 million, or an average of \$74.95 million per RBOC. That amount multiplied by 7 (the number of RBOCs) equals \$524.65 million for the RBOCs alone, well in excess of the \$480 million projected for the entire LEC industry, including independent LECs. Assuming that the USTA estimate of \$86.7 million covers all of the independents, the industry total would be \$611.35 million -- more than \$130 million above the Commission's estimate based upon stale and incomplete data.

²¹ Further Notice, *supra*, at ¶ 27 n. 44.

²² When the Commission "detariffed" LEC billing and collection in 1986, it did so on the premise that LEC billing and collection could become a competitive service. See Detariffing of Billing and Collection Services (Report and Order), 102 FCC2d 1150 (1986), *recon.* 1 FCC Rcd 445 (1986). If it is a competitive service, then each IXC/OSP's decision whether to utilize LEC billing and collection or to self-bill should be a business decision based upon the relative economics for that IXC/OSP. That decision should not be dictated for an IXC/OSP as a result of its decision to issue calling cards in a line number-based format.

their Line Information Data Base (LIDB) is untenable. Yet, commenting BOCs have represented to the Commission that fourteen digit screening, rather than ten digit screening, would add \$3 million to \$15 million per BOC to the cost of BPP implementation.²³ In other words, based upon those estimates, fourteen digit screening -- a necessary precondition to competitive provision of line number-based calling cards -- would add \$21 million to \$105 million to the BOCs' BPP costs. Of course, the independent LECs would incur similar additional costs. Yet, the Commission has failed to include any costs for fourteen digit screening in its BPP cost estimate.

The Commission's cost estimates also appear to exclude entirely LEC costs associated with the introduction to consumers of BPP. Specifically, the Commission does not seem to have factored into its BPP cost analysis any recognition of the costs which would be incurred by the LECs of notifying customers and of sending ballots to customers to effectuate their 0+ BPP choice. This omission is especially critical in light of the notification/balloting proposal set forth in the Further Notice.²⁴ As proposed by the Commission, the LECs would be allowed to use the cheapest and easiest means for informing consumers about BPP and affording them an opportunity to make their 0+ carrier selection -- the manner least likely to promote competition and to encourage consumers to make informed selections of 0+ carriers.

As proposed by the Commission, consumers would be notified once -- and only once -- by the LECs about BPP, and would be provided with a single ballot, in a billing insert. Those who did not respond to that one notification would be "defaulted" to their incumbent presubscribed 1+ carrier.²⁵ Based upon recently-issued FCC data, the "default

²³ Further Notice, *supra*, at ¶ 71.

²⁴ *Id.* at ¶¶ 65-67.

²⁵ The Further Notice contains no explanation as to what would happen when a consumer's "default" 1+ carrier does not offer 0+ services. Not all providers of 1+ service on a presubscribed basis even offer operator services.

carrier" would be one of the "Big 3" national carriers ninety-three percent of the time.²⁶ Less than a decade ago, the Commission observed that nonmandatory balloting and default to the incumbent carrier during the equal access conversion process was undermining development of interexchange service competition and enabling AT&T to retain a *de facto* monopoly. To alleviate those circumstances and to stimulate competition in the 1+ interexchange market, the Commission wisely required LECs providing equal access to engage in mandatory balloting and to allocate non-balloting customers among carriers rather than having them "defaulted" to the incumbent carrier.²⁷

While those balloting and allocation procedures (which required the LECs to provide two balloting opportunities to customers) increased the LECs' costs of implementing equal access and presubscription, they proved to be essential components of the equal access process. There is no reason to conclude that such procedures would be any less essential to development of 0+ competition than they were to development 1+ competition, yet the Commission's cost analysis fails to include any costs for those activities.

The cost estimates reflected in the Further Notice exclude other costs which could be necessarily incurred by the LECs, depending upon how BPP is to be implemented. One such area involves the additional costs that would be incurred to enable BPP to accommodate commercial credit cards, in addition to calling cards and billed telephone numbers. In the Further Notice, the Commission tentatively concludes that, if BPP is implemented, it should accommodate commercial credit cards that conform to ISO/ANSI standards.²⁸ Yet, the Commission without explanation fails to include in its cost

²⁶ See Long Distance Market Shares (First Quarter 1994), issued by the Commission July 1994. According to that report at Table 4, as of December 1993, 71.2 percent of the nation's access lines are presubscribed to AT&T, 15.3 percent to MCI, and 6.5 percent to Sprint.

²⁷ Investigation of Access and Divestiture Related Tariffs, 101 FCC2d 911, *recon.*, 102 FCC2d 503 (1985).

²⁸ Further Notice, *supra*, at ¶ 80.

estimates any additional costs of accommodating commercial credit cards despite the fact that several commenting LECs have indicated that the changes in BPP design necessary to include commercial credit cards would add at least \$ 3 million to each LEC's costs.²⁹

Also understated by the Commission and, in some instances, wholly ignored, are the BPP costs which would be borne by entities other than the LECs, including OSPs and aggregators. The Further Notice devotes only a single paragraph to OSP costs, and "extrapolates," based on AT&T, MCI and Sprint estimates, that OSP costs would not exceed \$120 million. These costs appear unrealistically low and do not seem to include such important components as the cost to IXC's of reissuance of millions of calling cards, now issued in a line-based number format, which would become necessary if the Commission accedes to the LECs' wishes and requires only 10- digit screening.

Further, the Commission's "extrapolation" of OSP costs appear to include no additional costs for the changes to marketing of services made necessary by BPP. Throughout the Further Notice, the Commission cites as a benefit of BPP that it would refocus competition on consumers rather than on paying commissions to aggregators.³⁰ Whether or not that is an appropriate public interest benefit to be considered by the Commission will be addressed by Oncor elsewhere in these comments. For purposes of this discussion of the cost side of the Commission's cost/benefit analysis, it is sufficient to note that the Commission's articulation of OSP costs excludes any attribution of additional OSP marketing and advertising costs that would become necessary if Oncor and other OSPs who, today market their services directly to aggregators, were forced to refocus their marketing efforts toward end users. Certainly, OSPs would incur substantial additional sales and marketing costs, none of which are acknowledged by the Further Notice.

29 *Id.* at ¶ 78.

30 *Id.* at ¶ 9.

LECs and OSPs are not the only entities which would bear significant costs if BPP were to be mandated by the Commission. Those entities classified by TOCSIA and by the Commission's rules as aggregators would incur millions of dollars in wasted, stranded investment as a result of BPP. In 1991, the Commission adopted rules requiring all telephone equipment made available to the public, including pay telephones, as well as telephones in hotel, motel, hospital, dormitory, and other institutional facilities -- profit and nonprofit -- to be capable to passing 1-800, 950 and "equal access codes" (i.e., 10XXX) codes. Under those rules, equipment which had blocked access to access codes had to be unblocked. Equipment which needed modification in order to allow use of access codes had to be modified. Equipment which could not be modified at a cost of less than \$15.00 per access line must be replaced by April 17, 1997, irrespective of cost, and irrespective of the hardship which such modification/replacement would impose on the aggregators.

Compliance with these equipment access code requirements has been costly, especially for smaller businesses, and for the many publicly-supported nonprofit institutions subject to those rules.³¹ Yet, the Commission wholly ignores these costs in its calculation of the costs of BPP.

The examples of understated and wholly disregarded costs set forth in the preceding paragraphs are not intended to comprise an exhaustive list of costs excluded from the Commission's analysis. They are cited herein as illustrative examples of the insufficiency of the compilation of anticipated BPP costs included in the Commission's

³¹ As recently as July 12, 1994, the Commission refused to carve out an exception or grant a waiver of those requirements even for the nation's smaller and more rural hospitals. See Federation of American Health Systems (*Petition for Declaratory Ruling or in the Alternative Petition for Waiver*), DA 94-756, released July 12, 1994.

analysis. The Commission cannot provide a meaningful evaluation of the total costs of BPP implementation until it is able to identify and calculate all of those costs. Without a comprehensive picture of all of the costs which BPP would impose upon LECs, IXC/OSPs, aggregators, and on the public in general, the Commission is in no position to compare those costs with its perceived benefits of BPP.

III. THE PUBLIC INTEREST "BENEFITS" OF BPP NOTED BY THE COMMISSION ARE UNSUPPORTED BY THE RECORD AND ARE MISSTATED

In support of its conclusion that BPP could serve the public interest, the Commission lists the following potential benefits:

1. BPP would facilitate access to the telephone network by eliminating the need for callers to use access codes on operator service calls;
2. BPP would stimulate operator service competition by a) eliminating AT&T's advantages in the operator service market, and b) refocusing operator service competition more squarely on consumers; and,
3. The technology required for BPP would enrich the nation's telecommunications infrastructure, paving the way for further network innovation.³²

None of these asserted public interest benefits are supported by the record. Indeed, the record and other available information indicates that these benefits are illusory and that, to the extent that they are desirable public interest goals, they can be achieved by other, far less costly, less intrusive means.

a. Access Code Dialing Does Not Impede Access to the Network

Underlying this purported benefit of BPP is the implicit notion that there is something inherently bad about consumer use of access code dialing, when necessary, to

³² Further Notice, *supra*, at ¶ 2.

reach their desired carriers,³³ and that it would be appropriate for a governmental agency to require the telephone industry -- and ultimately, its ratepayers -- to expend well in excess of one billion dollars to enable callers to reach their chosen carriers without ever having to use access codes. The suggestion that access code dialing somehow impedes access to telecommunications networks is unsupported by the record and is contradicted by fact. The only "evidence" in support of that proposition are the statements of several commenting parties (all of whom have advocated adoption of BPP for their own strategic reasons in this proceeding) that "many consumers find access codes inconvenient," and a reference to a single "focus group" by one of those commenters.³⁴

Oncor respectfully suggests that the "best evidence" of customer perception of access code dialing is not the self-serving comments of BPP supporters or focus groups conducted by those supporters. Rather, the most reliable indicator of customer perceptions of access code dialing is their conduct in the marketplace. Stated simply, consumers "vote with their feet." As Oncor has indicated above, "dial around" calling has increased dramatically in the two years since access code dialing has been required at all aggregator locations. At telephones served by Oncor, access code dialing has grown at a rate of fifteen to twenty-five percent per year. That trend is expected to continue and to accelerate. Access code dialing has become a major aspect of IXC marketing strategies. National carriers, led by AT&T and MCI, have invested heavily in their marketing of such access code-based dialing services as 1-800-COLLECT, 1-800-

³³ As noted in a study commissioned by CompTel and appended to a CompTel *ex parte* presentation, the vast majority 0+ calls already are routed to the caller's preferred carrier. According to that study, only nineteen percent of 0+ calls would be routed differently if BPP were implemented than they are routed today. See Further Notice, *supra*, at ¶ 10 n. 18.

³⁴ See Further Notice, *supra*, at ¶ 10 n. 21 for references to those comments which assert the inconvenience of access code calling.